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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-177-2021 (O&M)
Date of Decision: 15.12.2021

Punjab National bank

..... Petitioner

Versus

Shailinder Mahant and Ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr.R.S.Bhatia, Advocate, for the petitioner.

Mr. Onkar Singh Batalvi, Advocate and
Mr. Tarun Aggarwal, Advocate, respondent Nos.1 and 2.

Mr. Alok Jagga, Advocate, for respondent No.4.

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SUDHIR MITTAL, J.

CM-13740-CII-2021

This application has been filed on behalf of the respondents No.1 and 2 to place on record Annexure R-1/1 to Annexure R-1/4.

It is submitted that the documents are essential for deciding the revision petition, thus the application be allowed.

The application has been resisted by counsel for the non-applicant/petitioner on the ground that an application under Order VII Rule 11 C.P.C. is to be decided only on a bare perusal of the plaint. Additional documents cannot be referred to and thus the application is misconceived and the documents annexed therewith are irrelevant.

The submission of learned counsel for the non-applicant-petitioner is well founded. It is settled law that while deciding an application under Order VII Rule 11 C.P.C., only the plaint is to be seen. The revision petition arises out of an order dismissing the application under Order VII Rule 11 C.P.C. and thus the documents annexed with this application are not relevant.

In view of the above, the application is dismissed.

<u>CR-177-2021</u>

The petitioner, a bank, is aggrieved with order dated 21.12.2020 (Annexure P-1) as its application under Order VII Rule 11 of the Code of Civil Procedure (hereinafter referred to as C.P.C.) in a suit filed by respondents No.1 and 2, has been dismissed.

Undisputed facts are that the account of entity named as Mittal Udyog Samiti was classified as a non-performing asset on 31.03.2016. Notice dated 20.08.2018 was issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act). Symbolic possession was taken vide possession notice dated 21.12.2019. The mortgaged property was advertised for auction vide an auction notice dated 22.07.2020 and was actually auctioned on 24.08.2020. Respondents No.3 and 4 are the auction purchasers. Sale in their favour was confirmed vide letter dated 03.09.2020. Soon thereafter, a civil suit for injuction dated 28.10.2020 was filed by respondents No.1 and 2 restraining the Bank and the auction purchaser from dispossessing them or interfering in their possession, forcibly and illegally. Major averment made in the plaint is that the suit land was never mortgaged or pledged and there is no entry in the revenue record regarding the same. As stated hereinabove, the petitioner filed an application under Order VII Rule 11 CPC which has been dismissed vide order dated 21.12.2020.

An additional fact may be noticed which is that Neelam Mahant (mother of respondents No.1 and 2) had also filed an identical suit in which too, an application under Order VII Rule 11 was presented. This application was allowed vide order dated 21.12.2020 passed by the same court and the plaint filed by her has been ordered to be returned for presenting before the appropriate Tribunal. It is also worth mentioning that respondents No.1 and 2 had sold the suit property to one Sukhwinder Singh S/o Pooran Singh. A criminal case was registered against the vendors and the vendee wherein affidavit Annexure P-12 was submitted by Sukhwinder Singh stating that after the sale in his favour he came to know that the property was mortgaged with the petitioner. Therefore, the sale has been cancelled.

Learned counsel for the petitioner and the auction purchaser have raised identical arguments. Their case is that Section 34 of SARFAESI Act bars the jurisdiction of the Civil Court. Vide the impugned order this issue has not been considered at all by the trial Court. Further, vide an order of even date passed in a suit filed by the mother of respondents No.1 and 2, the application under Order VII Rule 11 CPC has been allowed. Thus, on this ground also the impugned order deserved to be set aside. Reliance has been placed upon "***State Bank of Patiala Vs. Mukesh jain & Anr. 2016(4) R.C.R.(Civil) 1028 and Jagdish Singh Vs. Heeralal and others 2014(1) SCC 479.***

On behalf of respondents No.1 and 2, it has been submitted that on receipt of notice under Section 13(2) of SARFAESI Act, a reply under Section 13 (3A) of the said Act was submitted objecting to the action of the petitioner. Thereafter, no notice under Section 13(4) of SARFAESI Act was received. An appeal under Section 17 of SARFAESI Act can be filed only against a notice under Section 13 (4) of the said Act. Since no appeal was maintainable, the jurisdiction of the Civil Court was not barred. The other contention is that the suit property has never been mortgaged and this is apparent from the statement dated 15.12.2020 got recorded by the Chief Manager of the Bank before the learned CJM, Gurdaspur. Thus, the civil Court had jurisdiction to entertain the suit.

In rebuttal, learned counsel for the petitioner and the auction purchaser have submitted that there could be no registered mortgage deed as the mortgage was by deposit of title deeds. The statement dated 15.12.2020 is factually correct, but does not affect the merits of this case.

From the facts narrated hereinabove, it is evident that proceedings under SARFAESI Act have been initiated by the petitioner for realising its security interest. The submissions of learned counsel for respondents No.1 and 2 that no notice under Section 13(4) of the said Act was issued, is patently incorrect. Along with CM-13740-CII-2021 Annexure R-1/1 has been placed on record which is a notice under Section 13 (4) of SARFAESI Act. The submission that the said notice is not addressed to respondents No.1 and 2 is of no avail. An appeal under Section 17 of SARFAESI Act can be preferred by 'any person' aggrieved by any of the measures referred to in Section 13(4). Admittedly, notice under Section 13 (4) of SARFAESI Act was issued to the principal borrowers and thus the same could have been challenged by respondents No.1 and 2, who are the guarantors.

The argument that the property was never mortgaged and that proof thereof is in the statement of the Chief Manager of the Bank is also misconceived and misplaced. The statement dated 15.12.2020 of the Chief Manager is only to the effect that there was no registered mortgage deed. The case of the bank is based upon mortgage by deposit of title deeds which fact has not been disputed. Thus, there was no illegality in the proceedings. Judgments in Mukesh Jain (supra) and Jadish Singh (supra) make it abundantly clear that Section 34 of SARFAESI Act bars the jurisdiction of the Civil Court in matters as the present one. The impugned order shows that Section 34 has only been noticed by the trial Court but its import has not been considered at all. The claim in the suit is based upon the allegation that the suit land was never mortgaged. This ground can also be raised in an appeal filed under Section 17 of SARFAESI Act. Thus, it has to be held that the suit was not maintainable.

The revision petition is accordingly allowed and impugned order dated 21.12.2020 (Annexure P-11) is set aside. The plaint is ordered to be rejected.

The fact that the plaint of an identical suit filed by the mother of respondents No.1 and 2 has been rejected vide an order passed on the same date by the same court (Annexure P-13) raised doubts in the mind of this Court. Thus, it is directed that a copy of this judgment be placed before the Hon'ble Administrative Judge of District Gurdaspur, so that he may take appropriate action, if felt necessary.

15.12.2021 **(SUDHIR MITTAL)**
Suni*l Devi* **JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No